

S. 1726

PUBLIC INFORMATION ACT OF 1973

Title I

The essential point of the bill for the Agency is whether existing statutory exemptions protect all equities. If this is the case, then the bill has no effect on the Agency. Therefore, the effect of the title on the Agency depends upon the answer to this important question. Unfortunately, the same would not necessarily be true with any other elements of the intelligence community save AEC and NSA.

Pg. 2, L. 21:

Sec. 103(3)--"foreign policy" is wiped out as a basis for exempting information from the Freedom of Information Act under 4(b)(1) of 5 U.S.C. 552. (Note: old 4(b)(3) is not affected. Thus, under section 6 of P.L. 110, for example, we could protect against the disclosure of organization, functions, names, titles, salaries, and number of people employed in the Agency. The real question is whether "intelligence sources and methods" provisos constitute a further and fully satisfactory specific statutory exemption from disclosure.).

Pg. 3, L. 17-22:

Emphasis on the legislation is not to protect properly classified information from unauthorized disclosure.  
*3-25*

Pg. 4, L. 2-6:

~~4-5-21~~ Sources and methods would also appear to be protected under "Secret Defense Data" if disclosure would adversely affect the ability of the U.S. to protect itself against hostile action.

Pg. 4, L. 4:

Change the word "would" to "could" ?  
*4-5-21*

Pg. 7, L. 10-15:

7 - 16/2 This would conflict with existing law, e. g., section 6 of P. L. 110.

Pg. 8, L. 4-11:

This would conflict with existing law, e. g., section 6 of P. L. 110.

Pg. 8, L. 20 et seq.:

Information provided by foreign government would be made available to any Member. (Note: the criteria for classification, "could reasonably be expected to cause damage to the national defense," is less rigid than for U. S. originated material, pg. 4, L. 4.)

Pg. 10, L. 1:

"or can no longer be protected against unauthorized disclosure"-- this means an illegal act brings about official "declassification."

Pg. 11, L. 21 et seq.:

Regarding deferral of automatic declassification, this would result in reporting in possible conflict with the necessity to protect intelligence sources and methods. It appears to place an almost unbearable burden upon the head of an agency if a number of items are involved, even though latitude is given in setting ultimate declassification date, pg. 13, L. 3-4.

Pg. 13, L. 13 et seq.:

Eventually could be tested as an unconstitutional invasion of the prerogatives of the President.

Pg. 14, L. 2:

Appears to upset the decision in the Mink case.

Pg. 15, L. 25 et seq.:

Any custodian of classified information may at any time recommend immediate declassification, although it is not clear what happens after the issue is joined.

Pg. 16, L. 6 et seq.:

Appears to be an infringement of the DCI's clear authority to issue regulations and to control the disciplining of Agency personnel. The Comptroller General's right to audit and investigate compliance, is in conflict with the intelligence sources and methods proviso in section 6 of P. L. 110.

Pg. 18, L. 15:

A similar exemption for CIA should be inserted at this point. This would leave the rest of the intelligence community subject to the act, however, and consideration should be given to extending protection to elements of the community.

Title II

Title II of the bill concerns increasing congressional immunity and would not be a proper subject for Agency comment, although note pg. 21, L. 25, that a Member informing the public on matters of local or national importance appears to be a completely protected area.

Title III

Title III concerns the Office of General Counsel of the Congress.

Pg. 23, L. 14:

Provides basis for civil action by any Member of Congress denied information.

Pg. 24, L. 19:

Conflicts with existing legislative oversight arrangements and with statutes protecting CIA information.

Title IV

Pg. 29, L. 20:

Concerning "privilege", among other things authorizes a Member and the General Accounting Office to obtain information unless "privilege" is resorted to within 15 days. In the case of a committee, the claim of privilege may be overruled by vote and continued refusal may subject the offender to contempt of Congress and other civil action (pg. 23, L.18) which could include a number of actions including perhaps the loss of job, compensation, etc.

Pg. 30, L. 18 et seq.:

Protects "advice" but not the basis of advice (NIE) from action under this title.

Title V

Title V, concerning communications media privilege, is generally beyond the purview of the Agency for comment. The lack of specificity in definition appears to spread a blanket of protection over almost everyone.

## ROUTING AND RECORD SHEET

STATINTL SUBJECT: (Optional)

STATINTL

FROM:		EXTENSION	NO.
OLC 7D35		6136	OLC 73-0570
		DATE	
		13 June 1973	
TO: (Officer designation, room number, and building)		DATE	
		RECEIVED	FORWARDED
1. OGC		6/14	6/15
2.			
3. DD/M&S		6/15	
4.			
5. D/Security		6/15	
6.			
7.			
8.			
9.			
10.			
11. OLC 7D35			
12.			
13.			
14.			
15.			
OFFICER'S INITIALS			
COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)			
<p>Senator Ervin has requested the Director's views and recommendations concerning S. 1724 which has been sent to you previously.</p> <p>The bill is rather comprehensive and attached is a listing of points which we have noted concerning the bill which could serve as a basis for an Agency position.</p> <p>We would appreciate your suggestions.</p>			

3 to 5:

STATINTL

Your action. Please coordinate with [redacted] STATINTL as appropriate.

EDP

Suspense: 27 June 1973